

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALICE VICKERS, COMPLAINANT	)	
	)	
VS.	)	CASE NO. 9615
	)	
UNION LIGHT, HEAT AND POWER	)	
COMPANY, DEFENDANT	)	

O R D E R

On October 27, 1986, Alice Vickers ("Mrs. Vickers") filed a petition for a rehearing of the Commission's Order dated October 6, 1986. A response from Union Light, Heat and Power Company ("ULH&P") was filed November 10, 1986.

Four primary issues are raised in the petition.

Intent and Ability to Pay

Mrs. Vickers states that she intended to pay the utility bill, that she had the income to do so, and that Mr. Frazier, not her, would "chip in on it." However, the record is contradictory on who intended to pay. Mrs. Vickers testified that she intended to pay. Mr. Frazier, though, testified that he intended to pay the utility bills at the Carlisle residence himself (Transcript, p. 26) and that Mrs. Vickers "was going to give me something on it" (Transcript, p. 26).

The Commission notes that Mrs. Vickers correctly points out a mistaken reference in the Order at page 3. The Order intended to refer to Mr. Frazier and his complete response at that point in

the testimony, which states: "Yeah. Well, I was going to chip in on it. She was going to give me something on it. We were going to work it out." (Transcript, p. 26). When this statement, taken in its entirety, is compared to Mrs. Vickers' statement an ambiguity arises as to who intended to assume the responsibility to pay.

Mrs. Vickers asserts that the income from her assistance payment, \$170 per month, demonstrates her ability to pay the utility bill. However, Mrs. Vickers incurred a delinquent utility bill at Royal Drive (Transcript, p. 9), a residence previous to Madison and Carlisle; and Mrs. Vickers made only the minimum payment towards that delinquency in order to receive service at Carlisle (Transcript, pp. 9-10). These events occurred while Mrs. Vickers was presumably receiving the same \$170 per month assistance payment. However, the Commission is of the opinion that whether or not Mrs. Vickers had the ability to pay is overshadowed by the failure to pay past bills. The bases for the Order's findings are that Mrs. Vickers and Mr. Frazier constituted a household and incurred the utility bill as such, and that Mrs. Vickers applied for service at Carlisle for that household since the household was together at the time of application (Transcript, p. 8), and the household moved into the Carlisle residence together once service was provided (Transcript, pp. 8-9).

#### Definition of Customer

Mrs. Vickers asserts that the Order redefines the meaning of "customer", that the Commission's regulations do not define "customer" as a household, and that the Commission has amended its

regulations without notice. However, the Commission has neither redefined the meaning of "customer" nor amended its regulations in this regard. 807 KAR 5:006, Section 2(3), defines customer as "any person, firm, corporation or body politic supplied service by any utility; and KRS 278.010(2) states that a person includes "two or more persons having a joint or common interest." In this Order the Commission has found that the utility properly transferred a household's delinquent bill to that household's new residence. The record in this case indicates that Mrs. Vickers and Mr. Frazier were together at Madison and incurred a delinquent bill in the name of Mr. Frazier; they were together at the time Mrs. Vickers applied for service at Carlisle; and they were together when they moved into the Carlisle residence. In this Order the Commission has concluded that Mrs. Vickers and Mr. Frazier shared a common interest at the Madison and Carlisle residences, one of which was the provision of utility service, and these common interests in this case have been defined as a household.

#### Presence of Fraud

Mrs. Vickers asserts that the Commission's finding of fraud is unsupportable since she is not legally liable for Mr. Frazier's debt and since no person can know how to define "customer" in any particular situation.

Based upon 807 KAR 5:006, Section 2(3), and KRS 278.010(2), the Commission is of the opinion that the debt was incurred by the household of Mr. Frazier and Mrs. Vickers, not by Mr. Frazier alone. The record discloses that they were together sharing common interests at the time the debt from Madison was incurred

and, thus, constituted a household. Furthermore, it was testified that Mrs. Vickers was the applicant for service at the Carlisle residence because Mr. Frazier knew the utility would not provide service in his name (Transcript, pp. 25-28). Based upon the record it is clear that such application was for her, Mr. Frazier and her children, i.e., the household, and not for herself. The Commission has concluded that in this manner Mrs. Vickers and Mr. Frazier acted together to obtain new utility service fraudulently.

In addition, the Commission as trier of fact, must gauge the credibility of witnesses. It has determined that the testimony of Mrs. Vickers and Mr. Frazier indicates a substantial lack of credibility. For example, each applied for service giving false information; Mr. Frazier altered a medical certificate to retain service; and each admitted applying for service without any real means to pay for it. Based on this admitted conduct, the Commission has little choice but to question the truthfulness of any of the testimony. It is against the background of this pattern of conduct that the finding of fraud was based.

#### Imposition of Liability

The petition raises the question of whether the Commission can impose liability on Mrs. Vickers for Mr. Frazier's debts. This is not an issue before the Commission. No liability has been imposed. The Order merely finds that Mrs. Vickers in concert with Mr. Frazier went to great lengths over a period of time deceptively to obtain utility service. Because of their actions, the ULH&P is not now obligated to continue to provide service to either one, individually or jointly, until the unpaid accounts

have been satisfied. There is no finding that Mrs. Vickers must pay Mr. Frazier's bills or vice versa. The only relevant finding is that each is responsible for causing the bills to have been incurred, and until payment is made neither is entitled to continued utility service.

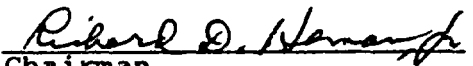
The final issue is whether the Commission's decision-making process is subject to public scrutiny. It is a generally accepted principle of administrative law that the preliminary work product is not subject to inquiry.

The appropriate avenues for review of the order is as Mrs. Vickers has followed - a rehearing petition to take issue with the findings. It is the order which is subject to challenge, not the mental processes which culminate in that order. Furthermore, if any party feels the Commission has violated its statutory obligations, under KRS 278.410 et seq., appeal to Franklin Circuit Court is available.

IT IS THEREFORE ORDERED that the Petition is denied on all issues; and the findings of the Order of October 6, 1986, are affirmed.

Done at Frankfort, Kentucky, this 14th day of November, 1986.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

\_\_\_\_\_  
Executive Director

  
Commissioner